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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 STONEX GROUP, INCORPORATED,

4 Plaintiff,

5 v.

23 Civ. 613 (JGK)
Redacted

6 HOWARD SHIPMAN,

7 Defendant.

Remote Conference

8 -----x
9 New York, N.Y.
10 February 1, 2023
2:05 p.m.

11 Before:

12 HON. JOHN G. KOELTL,
13 District Judge

14 APPEARANCES

15 PROSKAUER, LLP
Attorneys for Plaintiff
16 BY: LLOYD B. CHINN
NIGEL F. TELMAN
17 DARYL LEON

18 PETERS HAMLIN LAW, LLC
Attorney for Plaintiff
19 BY: Kristan Peters-Hamlin
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(The Court and all parties appearing telephonically)

(Case called)

THE COURT: Who is on the line for the plaintiff?

MR. CHINN: Good afternoon, your Honor. This is Lloyd Chinn from Proskauer. I'm joined by my colleague, Daryl Leon, who is sitting in my office with me; a junior associate working with us is just observing, she's not participating or billing her time, but her name is Sydney Cone, she's also on the line; and we're joined by an in-house counsel from Stonex, Craig Hymowitz.

THE COURT: Okay.

SPEAKER5: And Nigel Telman is also on the line.

MR. CHINN: My apologies. I didn't realize my colleague from Chicago is also on the line, Mr. Telman. I didn't realize.

THE COURT: No problem. Okay.

Who is on the line for the defendant?

MS. PETERS-HAMLIN: Good afternoon, your Honor. Kristan Peters-Hamlin on behalf of Howard Shipman.

THE COURT: Okay. Is your client on the line also or not?

MS. PETERS-HAMLIN: No, because this is a scheduling matter.

THE COURT: That's okay. I didn't require his presence.

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1 Okay. Well, I've read the papers, and I have my own
2 observations. But before I delve in, is there anything the
3 parties want to tell me?

4 MR. CHINN: Yes, your Honor. We would like, on behalf
5 of Stonex, to address at least briefly the theory that has been
6 proffered by the plaintiff -- I'm sorry, by the defendant for
7 why discovery in this matter needs to be so expansive.

8 I don't want to go too far into this, because I
9 suppose we can address some of this another time, but the basis
10 for the defendant's request for lengthier periods of discovery
11 than plaintiffs had proposed is based on a series of assertions
12 regarding the manner in which Stonex obtains some unidentified
13 source code from another company called BTIG. We don't believe
14 that there's any basis here on this set of allegations for the
15 Court to expand the scope of discovery in the way suggested by
16 the defendant.

17 First, procedurally speaking, there's no reason for
18 BTIG to be a party of any sort in this case. I think the word
19 impleader was used. That makes absolutely no sense at all.
20 Mr. Shipman has no claim -- possible claim against BTIG. And
21 Mr. Shipman as has no basis to stand in BTIG's shoes to assert
22 claims against Stonex, even if there were any.

23 Moreover, the factual theory put forward by the
24 defendant makes no sense on its face. We have identified, that
25 is, Stonex has identified, two sets of computer code that

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1 Shipman has taken. And we've explained in our papers, one of
2 them is referred to as Pasqual, and one referred to as Darwin.
3 And Mr. Shipman is not clear as to what he's even claiming was
4 stolen by Stonex from BTIG. In paragraph 59 of his
5 declaration, he says 60 percent of something was stolen, but he
6 doesn't say 50 percent of what. But that couldn't have been
7 Darwin because Shipman, as we explained in our papers, was the
8 primary author of Darwin during the last several months of his
9 employment. That's what Stonex was paying him to develop. And
10 whatever he is talking about, even according to his own claim,
11 40 percent of whatever that is was indisputably belonging to
12 Stonex.

13 As to the actual *bona fides* of the argument, that
14 Stonex obtains something at issue in this case from BTIG --
15 again, I don't go too far into this, because the Court may want
16 to address this in more detail another time. But just to
17 address this from a scheduling perspective, we've addressed two
18 cases that deal with this argument. And this argument, even if
19 it was true as to 100 percent of the computer-coded issue in
20 this case, which is not even the claim, this argument fails as
21 a matter of law. And the two cases we've located that address
22 this very argument are *DTM Research, LLC. v. AT&T, Corp.*, 345
23 F.3d 327, and that's a 2001 4th Cir. case. There, the Court
24 observed that these simple ownership is not -- or was not
25 relevant in the trade secretary context.

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1 Another case, *Advance Fluid Systems, Inc. v. Huber*, 3d
2 Cir. 2020. "A *per se* ownership requirement for
3 misappropriation claims is flawed." It says, It takes account
4 neither of the substantial interests of lawful possessors of
5 the secrets how and the value of that secrecy, nor the
6 statutory language that creates the protection for trade
7 secrets while saying nothing of ownership as an element of a
8 claim for misappropriation.

9 And on the actual facts, there was a dispute—a very
10 minor one, if you will—between Stonex and BTIG that
11 Mr. Shipman references. And that dispute was resolved
12 confidentially in March 2021 between Stonex and BTIG. And at
13 issue in that case, all right, the conclusion of that -- it
14 wasn't a case. I shouldn't have used that word. At the
15 conclusion of that relatively minor dispute, it was understood
16 that no one at Stonex had stolen any proprietary code. An
17 individual who formally worked for BTIG who joined Stonex, a
18 Mr. Badhuri, had used his phone to take pictures of certain
19 BTIG code from his computer, but that code, as it turned out,
20 was publicly available code. Mr. Pfeuffer, while a BTIG
21 employee had downloaded a PDF from a public website, but
22 nothing was stolen or hidden from BTIG. And a third-party
23 forensic examination was conducted that showed ha none of this
24 was proprietary. So that matter was resolved. It involved
25 merely some payment for incurred attorneys fees by BTIG.

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1 I would note as well that Mr. Shipman never said a
2 word about this while employed, never asserted any concern that
3 the code he was working on was somehow not rightfully Stonex's.
4 But without this BTIG theory—which we think fails in all of
5 the various ways that I just reviewed—there is no reason for
6 this very expansive notion of discovery that's been threatened
7 by the defendant in various communications with us, and now
8 with the Court, to occur. And we believe that a schedule, such
9 as the one we've proposed or far more like the one we've
10 proposed, is appropriate in this matter once you separate the
11 weak from the shaft with respect to this BTIG issue.

12 So thank you, your Honor.

13 THE COURT: Let me make an observation before the
14 defense counsel gets an opportunity to speak.

15 The differences between the parties with respect to
16 the schedule is not that great. The plaintiff wants the
17 discovery cutoff to be March 1. The defendant wants it to be
18 no earlier than April 1. So a one-month difference. The
19 defendant also says counsel has a trial commitment that would
20 make it difficult to live with the March 1 deadline. I'd
21 always respect a trial commitment in any event. So the cutoff
22 for discovery of April 1 seems perfectly reasonable to me.

23 What should the scope of the discovery be with respect
24 to the preliminary injunction? I couldn't possibly on this
25 phone call say that any proposed discovery is out of bounds at

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1 this point. Defense counsel fights some cases which are not in
2 the correspondence and acknowledges that I may well decide this
3 at a later date or the magistrate judge could decide it at a
4 later date, and that observation is right on. You know,
5 Mr. Pfeuffer declaration is part of the plaintiff's submission,
6 so could the defendant take a deposition of Mr. Pfeuffer? I
7 would think the answer to that is yes.

8 MR. CHINN: We would agree.

9 THE COURT: Should there be some exclusions from
10 out-of-bounds restrictions on that deposition, it would be
11 hard, if not impossible, for me to decide that now or in
12 advance. For all I know, discovery into alleged prior bad acts
13 for the purposes of impeachment might be a relevant subject for
14 examination at a deposition. Mr. Pfeuffer appears to be a
15 fairly important witness, so it's hard to decide those
16 questions now. I mean, the parties' differences, at least
17 before me—and I wanted to let the parties talk before I
18 did—are relatively small. You know, there's a schedule, the
19 difference of which is only a month. So and then there's the
20 issue of CRA, which is a separate issue.

21 Okay. Ms. Peters-Hines, what do you want to tell me?

22 MS. PETERS-HAMLIN: Peters-Hamlin, your Honor.

23 THE COURT: I'm sorry. Did I --

24 MS. PETERS-HAMLIN: It's English rather than German.

25 THE COURT: Thank you. Sorry. I can't read my own

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1 notes.

2 MS. PETERS-HAMLIN: No problem.

3 I think that it's worthwhile to address a couple of
4 the mischaracterizations of the history with BTIG and also what
5 my arguments are.

6 As the Court is aware, that is only one part of my
7 argument. The discovery -- it sounds like you're willing to go
8 with April 1 anyway, but the discovery is not expansive because
9 BTIG -- that's a small part of what the discovery would be
10 because, clearly, I should have an opportunity to take the
11 deposition of the declarant.

12 And your Honor is spot on that impeachment is
13 absolutely one of the bases that I would want to explore with
14 BTIG. Because I've come to learn, I've looked at
15 communications that were made by text message from Mr. Pfeuffer
16 to my client in which he clearly indicates that he stole code
17 from BTIG and was bringing it to their "new venture." And he
18 says that the way he was able to get it out without their
19 detection was a technique where he E-encrypt source code to the
20 end of the PDF file's law internal instructions. And it turns
21 out that he then -- something that Mr. Badhuri did, who used to
22 sit right next to Mr. Pfeuffer at BTIG, he also took something
23 more than just that one photograph. And we have information
24 about that. BTIG will undoubtedly be looking into that now and
25 finding those encrypted PDFs. But it turns out that

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1 Mr. Pfeuffer provided a declaration swearing under oath that he
2 hadn't taken anything. And that declaration is absolutely
3 contradicted by the text messages that I've reviewed where he
4 tells my client that he did take that information and brought
5 it with him. So the declaration that he provided to BTIG is
6 precarious.

7 So your Honor is absolutely right, that kind of
8 information that this individual is ready, willing, and able to
9 lie about under oath is something that's going to be very
10 powerful, I think, in your Honor's assessment of whether -- you
11 know, because some of this is going to be a he-said-she-said,
12 right? It's very powerful evidence for your Honor to consider,
13 and it also goes to the issue of whether the portion of the
14 Darwin code that [REDACTED]

15 [REDACTED]
16 [REDACTED] and they worked on it
17 together, and they shared a password to that code, which was
18 insisted upon by Mr. Pfeuffer. He insisted that they share a
19 password whenever they worked on the Darwin code. So they both
20 had access to what each other was doing. So the portion of the
21 code that was worked on by Mr. Pfeuffer [REDACTED]
22 [REDACTED] 60 percent of that was stolen from BTIG. And those
23 encrypted PDFs are going to be coming to light, I believe,
24 shortly. And BTIG probably is an indispensable party here.
25 Because it turns out that this code that Stonex is suing over

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1 is the springboard for that code. The platform for that code
2 was developed at BTIG. And if that were true, then obviously
3 Mr. Pfeuffer would have had no reason to steal it.

4 But moreover, there's another aspect of the code,
5 which I believe is called [REDACTED]. And [REDACTED] that
6 Mr. Badhuri, who sat right next to Mr. Pfeuffer at BTIG, stole
7 from BTIG as well. So Mr. Badhuri had his responsibilities on
8 the code, Mr. Shipman had his, and Mr. Pfeuffer had his own.
9 And they all contributed to the code and it was accessible at
10 all times to Mr. Pfeuffer, who shared a password to the Darwin
11 code. So the arguments that he can't get in, and he can't find
12 it, he was locked out are not true and, in fact, perjurious.
13 And in fact that's something we shouldn't be hamstrung in
14 proving.

15 With respect to Pasqual, your Honor, which he's
16 identified is a different source code, what is important to
17 know—and I think you saw that in the declaration—is there are
18 65 individuals who share access to Pasqual, and it's all under
19 the same password. So it's kind of impossible to say who did
20 what since everybody gets in under the same password. And they
21 found, actually, that -- they believed, as my client's
22 declaration said, that there was somebody overseas who was
23 accessing it.

24 But I believe that further belaboring this is probably
25 ill-advised because your Honor seems to indicate that April 1

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1 is a date that you're inclined to give it. So I would hope
2 that for the first two weeks of February we won't have any
3 depositions set. I note that there's a third-party subpoena
4 returnable on February 13 for Linode. We have no opposition to
5 that.

6 I should say that I've asked my client what Linode is
7 about and apparently it's something that was maintained both by
8 my client—he opened an account, it cost him I think \$120 a
9 month—and also by Mr. Pfeuffer. And I think the reason is
10 that they had a very unstable connection and they were both
11 working from home and I -- he said that the VPN dropped
12 frequently. So in order to access and do the work while they
13 were at Stonex, they used that Linode process and he dropped
14 the Linode account because it was only to provide that stable
15 connection. He dropped it after he left Stonex because it was
16 a -- you know, he was unemployed, he has like four or five
17 kids, and it was \$120 a month. So as of December 14, he
18 dropped that. However, you know, Linode can still be -- they
19 obviously still have the system and they can assess everything,
20 I believe, that Mr. Shipman did or had. And that will be
21 forthcoming promptly.

22 THE COURT: Can I say something at this point? Are
23 you finished with your initial observation?

24 MS. PETERS-HAMLIN: Well, the ones that address the
25 April 1 date and also the responses to some of the statements

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1 that he was making about BTIG and Darwin and that sort of
2 thing, I have finished with that portion, your Honor.

3 THE COURT: Okay. The parties should, both sides,
4 understand that I will keep my eye on the ball, so to speak.
5 And while the scope of discovery is broad, and certainly
6 limited to the claims that are before me, and proportional to
7 the needs for discovery with respect to those claims, I also
8 appreciate that there are heightened emotions, if you will, on
9 both sides. But I will keep my eye on the ball.

10 As I understand it, the issues are whether the
11 defendant took trade secrets from the plaintiff and is
12 potentially using them or not. There are certainly some broad
13 denials in the plaintiff's declarations and some gaps about
14 failures of recollection and, as I read it, inability to know
15 what was actually going on in the hour after the notice of
16 termination.

17 MR. CHINN: Your Honor, I believe you just misspoke
18 slightly. You referred to the plaintiff's declaration but,
19 based on what you're saying, I believe you're referring to the
20 defendant's.

21 THE COURT: Yes, yes.

22 Ms. Peters-Hamlin was kind enough to correct me
23 several times in the last conference; you're kind enough to
24 correct me now.

25 Yes, I was talking about the defendant's declaration.

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1 So all of the information with respect to BTIG may or
2 may not ultimately be relevant to those issues. I certainly
3 don't see why BTIG has to be a party to this case. The
4 plaintiff has no claim against BTIG. The defendant has no
5 claim against BTIG the only references to BTIG come from the
6 defendant's subtle suggestions that pursuing the case may get
7 the plaintiff in trouble with BTIG and, shouldn't we bring BTIG
8 into the mix so that it can assert all of its claims against
9 the plaintiff?

10 MS. PETERS-HAMLIN: I wouldn't say that's exactly my
11 argument. It's a little bit different than that, your Honor.
12 My argument is in fact --

13 THE COURT: Okay. But please, don't interrupt me.
14 After I'm done, you're certainly welcome to say what you would
15 like.

16 MS. PETERS-HAMLIN: My apologies.

17 THE COURT: That's okay. It's never necessary to
18 apologize.

19 So as I said, I will keep my eye on the ball, but
20 we're talking about now a reasonable schedule. The plaintiff
21 had wanted a discovery cutoff of March 1. The defendant wanted
22 a discovery cutoff a couple months later, but certainly no less
23 than April 1. So the discovery cutoff is April 1. Plaintiff's
24 moving brief on the motion for preliminary injunction,
25 April 14. Defendant's response, April 28. Plaintiff's reply,

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1 May 1. Hearings, May 24 at 9 a.m. I authorize expedited
2 discovery. If there are disputes with respect to the expedited
3 discovery or the scope of discovery, you could bring them to my
4 attention. If I can decide them, I'll attempt to decide them.
5 If I think I should refer all of the discovery disputes to the
6 magistrate judge, I will. I think that disposes of almost
7 everything, except for the issue with respect to Charles River.

8 MS. PETERS-HAMLIN: May I address that, your Honor?

9 THE COURT: Sure.

10 Is there anything else the parties want to tell me
11 with respect to the schedule that I've just set out or to
12 respond to anything that I've said?

13 MS. PETERS-HAMLIN: I would say that with respect to
14 the characterization that our reason for believing that BTIG is
15 relevant is because it might create trouble for the plaintiff,
16 that is not at all what our interest is. What our interest
17 actually is is that part of the burden of proof of the
18 plaintiff is to show that it had ownership of proprietary
19 information—"proprietary" obviously implies that they own
20 it—and that their proprietary information was stolen by my
21 client and used to some effect that has created damage for
22 them. And they cannot show that they owned this information
23 because they utilized the trade secrets developed at -- over
24 many, many years of BTIG. And in fact, they don't own -- this
25 isn't their proprietary information because it's stolen. And

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1 that's one aspect of their *prima facie* case. And that's why --
2 since we have to defend against the *prima facie* case, that is
3 why BTIG is relevant and, I believe, an indispensable party so
4 that they can participate in this sealed case and help
5 elucidate for this Court what part of this code is actually
6 theirs. So that was our actual argument.

7 And then I would like to know, since your Honor
8 suggested a magistrate -- I'm not familiar who the magistrate
9 is in this case, so if that can be addressed at some point just
10 to let me know, that would be helpful.

11 And then lastly, with respect to the CRA issue, since
12 that's my concern, when the Court is ready, I believe it makes
13 the most sense for me to be the person who addresses that first
14 for the Court as to why I'm asking the Court to amend its
15 as-ordered order to say that, with respect to just his laptop
16 computer, his personal computer that has attorney-client
17 privileged communications with me, settlement discussions with
18 me, also personal correspondence with family members, friends
19 very sensitive other personal information, I believe that CRA
20 should not look at that. I did not know until this week that
21 it was the same computer that he was using for his
22 correspondence with me that has been alleged to have some
23 Stonex information on it.

24 But the reason that we're concerned about having
25 Mr. Robinson is because, based on his affidavit, that gives me

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1 some concerns because he's used some language that causes me to
2 believe that he's not independent and objective. For instance,
3 in paragraph 6 and 7, he makes a statement using hearsay that
4 he received from the -- two statements of hearsay that he
5 received from Stonex personnel that can't possibly -- the
6 information regarding the termination of the plaintiff couldn't
7 possibly be within his own knowledge. And he relies on it when
8 a declaration should be based on personal knowledge. He uses
9 very heavy language such as how he destroyed Stonex data
10 without having any information sufficient about the migration
11 that occurred. And also, then admitting in paragraph 35 that
12 he can't really know what was done and whether this information
13 was destroyed.

14 THE COURT: Are you still there? There seemed to be a
15 break. Hello?

16 MR. CHINN: Your Honor, this is plaintiff's counsel.
17 We're still on. We can hear you, but we don't hear anything
18 from defense counsel.

19 THE COURT: Right.

20 Ms. Peters-Hamlin?

21 Ms. Simon, can you check, please.

22 THE DEPUTY CLERK: It looks like she may have dropped
23 off, but I will communicate with her.

24 THE COURT: Okay. Thank you. Should I stay on?

25 THE DEPUTY CLERK: For one moment, yes.

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(Pause)

THE COURT: Ms. Peters-Hamlin, are you on?

MS. PETERS-HAMLIN: Hello? This is

Kristan Peters-Hamlin.

THE COURT: Yes. Hi. This is Judge Koeltl.

Mr. Chinn, are you still on?

MR. CHINN: Yes, we're on.

THE COURT: Okay. Ms. Peters-Hamlin, you dropped off at the point where you were explaining to me why the declaration submitted by CRA indicates that they should not be expert employed to inspect the defendant's personal device.

MS. PETERS-HAMLIN: Correct.

So I just want to make clear that we don't have any problem with them inspecting Linode, or doing that, or the USB, we're just concerned with this particular laptop computer because it has attorney-client privileged communications on it as well as very personal and confidential information about his private life. So we were suggesting Blum Shapiro or Kroll to do that. And there are things in his declaration that caused me to believe that he spent some time talking with people inside Stonex and receiving information from them and is not as objective and independent as somebody that should have access to attorney-client privilege and trusted with attorney-client privilege communications and settlement discussions.

For instance, he says in paragraph 9 that he's going

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1 to describe—and he's using heavy language—how Mr. Shipman
2 "destroyed Stonex data." And then in paragraph 35 he says that
3 he cannot ascertain what is -- has been done until he actually
4 examines the computer and the USB, etc. So he seemed like he
5 exhibited an alacrity to make this very strong statement that
6 it was destroyed because he considers himself an agent of
7 Stonex.

8 He also says in paragraphs 6 and 7 information that is
9 clearly hearsay. It does meet the standards of direct and
10 personal knowledge concerning matters involving Mr. Shipman's
11 employment and when he was terminated, etc.

12 The other thing is in paragraph 12, for instance, he
13 makes a false statement that I shipped the laptop to CRA. In
14 fact, my client shipped it himself. He paid \$100. We were
15 told by Mr. Telman that they would reimburse him. They never
16 have. And he says there that I did it. Now, I don't know if
17 there was some reason to try to make my client look like he was
18 not cooperative and not willing to send the laptop in, but, in
19 fact, he did it of his own accord. So maybe that was just a
20 sloppy paragraph, but it was actually untrue.

21 I just -- I have concerns that my attorney-client
22 privileged communications with my client, which include
23 settlement discussions as well as -- the vast majority of stuff
24 on his computer has to do with private and personal family
25 things etc. It just doesn't seem, in light of what

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1 Mr. Robinson has said, that he's the appropriate person to look
2 at that. We suggested two outstanding companies, Blum Shapiro
3 and Kroll, just for that one computer to ensure that
4 attorney-client privileged communications aren't in the hands
5 of somebody who appears not to be as independent and unbiased
6 as he should be. And we would request that the Court just
7 modify the so-order to say that the parties will agree to a
8 third party to do the -- to forensically examine the laptop.
9 And we're ready, willing, and able to have that accomplished
10 this week, your Honor.

11 THE COURT: Okay. Mr. Chinn.

12 MR. CHINN: Well, your Honor, I guess I should -- I'm
13 sorry. Go ahead, please.

14 THE COURT: No. I was saying I don't think you had an
15 opportunity to respond to Ms. Peters-Hamlin.

16 MR. CHINN: Thank you very much.

17 Look, I'm not going to go back and rehash the BTIG
18 issues. I'm going to focus on this forensic imaging project,
19 unless there's something in particular the Court wants me to go
20 back and address. I mean, I think we've made our position
21 clear with respect to those other issues.

22 On the question of the forensic examination of
23 Mr. Shipman's devices, as the Court will recall, the voluntary
24 stipulation that was submitted to the Court, that was drafted
25 entirely by defense counsel and her client. So we did not --

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1 Stonex did not participate in the drafting of that. And in
2 that affidavit -- I'm sorry. In that stipulation that was
3 proposed and so ordered by the Court on January 26, defense
4 counsel and defendant are referring specifically to back to the
5 papers that we had already filed that they had reviewed. So
6 all the things that have just been said about the Charles River
7 Associates affidavit, all of those things were known at the
8 time the stipulation was submitted to the Court and so ordered.

9 In the days thereafter, following the entry of this
10 order, we engaged with Charles River Associates to prepare to
11 do this collection. We had hoped that it would have been on
12 Monday or Tuesday this week, but in reliance upon what had been
13 written by defense counsel and ordered by the Court, that's how
14 we proceeded.

15 On Monday, we were advised of this new issue, this
16 retraction of what has been stated in the so-called voluntary
17 stipulations to the Court, and we made it clear that we had no
18 interest in -- and the issue that was raised with us on Monday
19 was the issue of privilege. And we made it clear there that we
20 had no issue with segregating out privileged information and
21 that it would be easily accomplished since defense counsel made
22 it clear that all the privileged communications at issue were
23 with her at her e-mail address. And we understand that she was
24 retained by Mr. Shipman as counsel we believe at some point in
25 December of 2022, so we don't believe there's even a lengthy

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1 time period at issue. And so we stated during the call and we
2 made it clear in a letter to the Court that we were perfectly
3 prepared to agree to a protocol to protect that privileged
4 information and, indeed, even have the Court so order it so
5 that it would have the force of a court order and requiring
6 that those materials be segregated.

7 And the reason for this is just efficiency. We're
8 trying to move this along. This is what was, in fact, proposed
9 by the defendant, and we had been moving along that path. And
10 we'd like to continue to move along that path and not have to
11 halt the process to hire yet another vendor to come into the
12 process for this unique purpose. And we are perfectly willing,
13 as we said on paper, as we said to defense counsel, as I'm
14 saying now, to enter into any sort of appropriate stipulation
15 to be executed by a court order by the Court, if the Court's
16 willing to do so, to protect those interests.

17 And to the extent that there are other interests that
18 have now been identified that there are some sort of personal
19 documents—not privileged, but personal—you know, we have
20 every reason to believe that a protocol to be arrived at to
21 address those.

22 As far as the statements about Charles River
23 Associates—which is a very well-known, nationwide service
24 here—about the declaration at issue, I mean, these are really
25 sort of picking on the matters. I mean, paragraphs 6 and 7,

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1 they begin with "Upon information and belief." Yes, certain
2 information was provided to Charles River Associates by Stonex.
3 I mean, there's no question about that. That's obvious on the
4 face of the declaration. But that doesn't suggest that they
5 would act contrary to an agreed-upon protocol so ordered by the
6 Court.

7 I mean, in paragraph 9, he previews what his
8 conclusions are, and they're defended in paragraph after
9 paragraph throughout the declaration. So at one point, he
10 describes how the device came to be in Stonex's possession,
11 that is the personal laptop. That's in paragraph 12. He says,
12 "On January 3, 2023, CRA received a laptop that was shipped to
13 CRA by FedEx." No dispute there. "CRA" -- I think there's
14 just a letter there missing there. It says "RA," but I believe
15 it should say CRA. "CRA was informed by Proskauer that the
16 laptop was owned by Stonex, assigned to Shipman, and was
17 shipped to CRA by counsel representing Shipman."

18 Look, I don't know exactly -- there may be a mistake
19 there in terms of who actually shipped it, but to attribute
20 that to Charles River and say, because of that mistake they
21 cannot be trusted to follow an agreed-upon, so-ordered forensic
22 protocol, I just don't think is well-founded.

23 And then the attack on paragraph 35 -- I mean,
24 paragraph 34 is nothing more than sort of a summation of, look,
25 we've presented all of this evidence through the first 34

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1 paragraphs, but there are certain things that we don't know
2 because we don't have access yet to the devices themselves or
3 to the Linode cloud computer.

4 I don't think anything -- there's anything about any
5 of these paragraphs that have been pointed to that is in any
6 way troubling or suggests some ill motive or improper practice
7 on the part of Charles River Associates that would make them
8 unqualified to do what they were proposed to do by defendant
9 and his counsel on January 26, 2023.

10 And lastly, the current concern for us, as I've
11 already alluded to, is bringing a new vendor into this is going
12 to inherently slow things down. The contracting
13 process—though, I'm sure there's going to be some fight over
14 who's going to pay—what the precise scope is. We were
15 provided with a declaration just moments prior to the
16 commencement of this call. Apparently, there are two
17 computers. We don't know which of these is the one that's
18 being claimed to be the one that shouldn't be looked at by
19 Charles River.

20 So in short, we believe that this is going to lead to
21 substantial delay and there's no basis or need to do it. And
22 so that -- our position is that we should simply go forward on
23 the basis of the order signed on January 26, 2023. And we have
24 agreed on this call to a stipulation to be ordered by the Court
25 a protocol that protects Mr. Shipman's interests and privileged

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1 information and, as he's now disclosed, personal information.
2 We're happy to take whatever steps necessary to protect those
3 matters.

4 THE COURT: All right. I won't change the stipulation
5 that Charles River should be the organization that inspects the
6 personal computer in addition to the other devices. To bring
7 in another firm at this point just to inspect the personal
8 computer would unnecessarily add to the time and expense for
9 reviewing that computer. It would also be inconsistent with
10 the original stipulation, which was so ordered, and add a level
11 of complexity to the case, which is utterly unnecessary.

12 Charles River has already opined with respect to various
13 aspects of the search for information, and so it would be more
14 efficient to have it complete that process. The parties can
15 work out an acceptable protocol to protect any attorney-client
16 privilege or other agreed-upon redactions from the computer.

17 MS. PETERS-HAMLIN: And then, your Honor, will
18 so-order --

19 THE COURT: If you --

20 MS. PETERS-HAMLIN: -- inner spousal privilege?
21 There's attorney-client privilege. I don't know if there's
22 priest penitent -- I don't know. But we have to come
23 together --

24 THE COURT: I would --

25 MS. PETERS-HAMLIN: -- as parties.

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1 THE COURT: Yes, I would certainly authorize redaction
2 of spousal privilege, priest penitent privilege, as well as
3 doctor-patient, attorney-client.

4 MS. PETERS-HAMLIN: So I will look for something from
5 opposing counsel hopefully today or tomorrow. I'll try to get
6 my client. We'll revise it, if necessary, sign it, and then
7 we'll present it to the Court to be so ordered.

8 Your Honor, does that sound good to you?

9 THE COURT: Yes, that's good. I'm usually always
10 here.

11 By the way, the magistrate judge on the case is
12 Magistrate Judge Figueredo.

13 MS. PETERS-HAMLIN: Okay.

14 THE COURT: All right. I think that completes
15 everything.

16 Is there anything else for me now?

17 MS. PETERS-HAMLIN: No. Thank you so much, your
18 Honor. I appreciate it.

19 MR. CHINN: For the plaintiff, your Honor, no. I
20 mean, we did just receive this declaration a few moments before
21 the call and we don't believe it to be complete, but we have
22 not met and conferred on that matter with defense counsel. So
23 I think it would be premature to present that as a dispute to
24 the Court at the moment.

25 So with that, nothing further for plaintiffs.

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1 THE COURT: Okay. Great. Bye now.

2 (Adjourned)

3 (Recalled; appearances remain the same)

4 THE COURT: Okay. The reason for the follow-up call
5 is I should have mentioned in the earlier call that there was
6 the outstanding application for a temporary restraining order.
7 I don't know if that's been effectively withdrawn or if you
8 want me to rule on it.

9 Mr. Lloyd Chinn.

10 MR. CHINN: Your Honor, I believe this may have come
11 up in our initial call last Thursday, at least in some
12 preliminary fashion, I believe that Stonex is prepared to
13 proceed on the basis of the so-ordered stipulations and is
14 prepared to proceed from there to this application for a
15 preliminary injunction, assuming that there's no resolution or
16 something along the way.

17 THE COURT: Fine.

18 MR. CHINN: If that's acceptable --

19 THE COURT: Yes, absolutely, absolutely.

20 MR. CHINN: Okay.

21 THE COURT: Sure. No problem.

22 And I -- so the application for a temporary
23 restraining order is withdrawn in light of the so-ordered
24 stipulation, right?

25 MR. CHINN: Yes, your Honor.

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1 I think that was -- I think that makes a lot of sense
2 just from an efficiency point of view. So yes, that's our
3 position.

4 THE COURT: Great. And do you agree with that, too,
5 Ms. Peters-Hamlin?

6 MS. PETERS-HAMLIN: You bet.

7 THE COURT: Okay. Great. That was the reason for the
8 call. So I'll put that in the order that summarizes today's
9 conference calls. Thanks very much. Sorry for bringing you
10 back on.

11 (Adjourned)